

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for a Declaratory Ruling that)	WT Docket No. 00-239
Western Wireless' Basic Universal Service)	DA –00-2622
In Kansas is Subject to Regulation as)	
Local Exchange Service)	

Comments of BEACON TELECOMMUNICATIONS ADVISORS, LLC

Beacon Telecommunications Advisors, LLC (Beacon) joins the State Independent Alliance and Independent Telecommunications Group (collectively, the “Independents”) in asking the FCC for a declaratory ruling clarifying that Western Wireless’ Basic Universal Service (BUS) offering in Kansas is not a Commercial Mobile Radio Service (CMRS) and that federal law does not preempt or otherwise prohibit Kansas from applying regulations and Universal Service Fund requirements generally applicable to all local exchange carriers and to Eligible Telecommunications Carriers in Kansas.

I. WESTERN WIRELESS’ BUS OFFERING IS A FIXED SERVICE AND IS NOT CMRS

The Independents filed their Petition for a Declaratory Ruling in response to the Commission’s invitation in the *Second Report and Order and Order on Reconsideration* in WT Docket No. 96-6¹ for parties to request declaratory rulings regarding the regulatory status of particular fixed wireless service offerings on a case-by-case basis.² Mobile services are defined in 47 U.S.C. 153 (27) as a radio communication

¹ *Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Radio Services*, Second Report and Order and Order on Reconsideration, WT Docket 96-6. FCC 00-246 (rel. July 20, 2000) (“*Second Report and Order*”).

² *Second Report and Order* at para. 8 (“To the extent that a party requires a determination of whether or not a particular service that includes a fixed wireless component should be treated as CMRS, that party should petition the Commission for a declaratory ruling.”).

service involving mobile stations. Mobile stations are defined in 47 U.S.C. 153 (28) as “a radio-communication station capable of being moved and *which ordinarily does move*.”³ In their petition, the Independents supply the following facts that support the conclusion that Western Wireless’ BUS offering is a fixed local exchange service:

- Western Wireless’ refers to the service as a wireless local loop or a fixed wireless residential service in testimony before the Kansas Corporation Commission (KCC) and in its annual report to shareholders.⁴
- Telular, the manufacturer of the device used to provide Western Wireless’ BUS, named its product a “Fixed Wireless Terminal”.⁵ The “Fixed Wireless Terminal” lacks its own number pad, mouthpiece and ear piece; a separate standard telephone and cord must be connected to it.
- Western Wireless has testified in Kansas that it does not intend BUS to be a mobile service; the Fixed Wireless Terminal is ordinarily plugged into an electrical outlet of a residence.⁶ The requirement of a fixed electrical source to power this device is prima facie evidence that BUS is not mobile, and therefore is not a CMRS service.

³ 47 U.S.C. 153 (27) and (28) (emphasis added).

⁴ See Petition for Declaratory Ruling, *In the Matter of Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service*, WT Docket No. 00-239. DA 00-2622 (rcvd November 3, 2000), at pgs 7, 8, 12, and 13. (“*Independents’ Petition*”)

⁵ See *Independents’ Petition* at pgs 8-10.

⁶ See *Independents’ Petition* at pg 12.

Beacon supports the Independents view that the Western Wireless' BUS offering is in both fact and intent, a fixed local exchange service. First, Section 1.1.1 of the *Service Agreement of Western Wireless Corporation Universal Service Offering*⁷ submitted to the Kansas Corporation Commission states:

“The Company provides wireless local and long distance telecommunications services to Customers for voice, data and other types of telecommunications capable of transmission over Company's cellular network. When using wireless local loop equipment *at Customer's premises in accordance with Company's instructions*, transmission will be at adequate volume levels and free of excessive distortion.”

Beacon interprets this statements to mean that Western Wireless' quality of service is guaranteed only when the BUS unit is used at the customer's fixed premises.

Furthermore, Section 2.4 of the *Service Agreement*⁸ lists the Customer's Responsibilities to include:

“The Customer is responsible for arranging the access to its premises at times mutually agreeable to the Company and Customer when required for Company personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of the Company's services.”

Beacon concludes from this statement that Western Wireless' BUS offering is used at the customer's premises and is not meant to be removed by the customer. Obviously, if the Western Wireless' BUS offering was meant to be mobile, the customer could take his wireless local loop equipment to Western Wireless for repair or replacement. This is in contrast to Western Wireless' treatment of mobile handsets.⁹

These two statements made in Western Wireless' own service agreement show that the BUS offering is not a mobile station as defined in 47 U.S.C. 153 (28), because the BUS does not ordinarily move. Therefore, the Commission is compelled to find that Western Wireless' BUS offering is not CMRS.

⁷ See *Independents' Petition* at Attachment B, Exhibit C, pg 2 (emphasis added).

⁸ See *Independents' Petition* at Attachment B, Exhibit C, pg 7.

⁹ Compare to the Customer Service section at www.cellularonewest.com where customers are encouraged to return equipment by mail or to a Cellular One store.

II. WESTERN WIRELESS' FIXED LOCAL SERVICE OFFERING SHOULD BE SUBJECT TO THE SAME REGULATIONS AS ARE GENERALLY APPLICABLE TO ALL LOCAL EXCHANGE SERVICES.

In the *Second Report and Order*, the Commission rejected the presumption that all wireless service offerings of CMRS licensees should be regulated as a mobile service.¹⁰ Allowing CMRS providers to offer fixed wireless local exchange services without subjecting them to the same regulations and requirements as other local exchange carriers has the effect of favoring wireless technology over wireline technology. This conflicts with the universal service principles of competitive and technological neutrality previously recommended by the Joint Board and adopted by the Commission.¹¹ All local exchange carriers should be similarly regulated, regardless of the technology used so that no telecommunications provider receives an unfair advantage in the marketplace. Western Wireless should not be allowed to use maneuvering in the regulatory arena to avoid competing on a level playing field. Technology neutral universal service requirements should apply to all Eligible Telecommunications Carriers.

In fact, 47 U.S.C. 332 (c) (3) (A) anticipates the possible need for State regulation of CMRS carriers that provided local exchange services as a substitute for wireline service:

“no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications

¹⁰ *Second Report and Order* at para. 7.

¹¹ *See Report and Order, In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45. FCC 97-157 (rel. May 8, 1997), para. 47. The Commission defined “COMPETITIVE NEUTRALITY—Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”

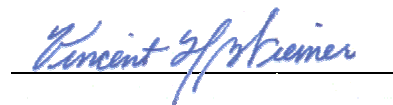
services necessary to ensure the universal availability of telecommunications service at affordable rates.”

Beacon interprets this rule to say that while a State Commission is preempted from regulating CMRS entry and the rates charged for CMRS service, the CMRS carriers providing local exchange service are not exempt from the regulations and requirements imposed by a State Commission on all universal service providers.

III. CONCLUSION

The Commission should declare that Western Wireless’ Basic Universal Service offering in Kansas is not a Commercial Mobile Radio Service and that federal law does not preempt or otherwise prohibit Kansas from applying regulations and Universal Service Fund requirements generally applicable to all local exchange carriers and to Eligible Telecommunications Carriers in Kansas. Such a ruling would also advise the Kansas Corporation Commission that Western Wireless’ BUS offering is subject to local exchange carrier regulations as provided in Sections 251 (a) and (b) of the Federal Act.

Respectfully submitted,

A handwritten signature in blue ink, reading "Vincent J. Obermer", is positioned above a horizontal line.

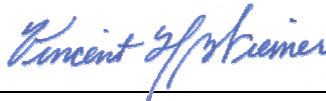
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December 21, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments of BEACON TELECOMMUNICATIONS ADVISORS, LLC were mailed first class or by electronic delivery on December 21, 2000.

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